



National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information

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CASES SUMMARIZED
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J.D. Consulting, LLC d/b/a Donaldson Traditional Interiors; J. Rosen Plastering, Inc.; and Cooper Plastering Corp. (29-RC-10336, et al.; 345 NLRB No. 117) Huntington, NY Nov. 30, 2005. The Board found, contrary to the Regional Director, that the Association (Plastering and Spray Fireproofing Contractors of Greater New York, Inc.), to which the Employers voluntarily belong, voluntarily recognized Intervenor Plasterers and Cement Masons Local 530 under Section 9(a) of the Act and entered into a 9(a) contract. Accordingly it found, unlike the Regional Director, that the single-employer units of plasterers petitioned for by Petitioner Bricklayers Local 1 are not separately appropriate. The Board remanded the matter to the Regional Director for further appropriate action. [\[HTML\]](#) [\[PDF\]](#)

The Regional Director found that the collective-bargaining agreement between the Association and the Intervenor is a Section 8(f) agreement and that each of the three petitioned-for single-employer units is a separately appropriate unit. He directed three separate elections in the units sought by the Petitioner. The Employers, the Association, and the Intervenor filed requests for review of the Regional Director's decision. On Aug. 24, 2005, the Board granted the requests for review solely with respect to whether the contract between the Association and the Intervenor is governed by Section 9(a) or 8(f) and whether the petitioned-for single employer units are appropriate.

In this decision on review, the Board concluded, contrary to the Regional Director, that (1) the Association voluntarily recognized the Intervenor as the 9(a) representative of a majority of employees employed by each Association member; (2) the Association and the Intervenor memorialized their 9(a) relationship in the current collective-bargaining agreement; and (3) the single-employer units are inappropriate in light of the Employer's bargaining history under Section 9(a) on a multiemployer basis.

(Chairman Battista and Members Liebman and Schaumber participated.)

North Hills Office Services, Inc. (29-CA-26546; 345 NLRB No. 107) Port Jefferson, NY Nov. 30, 2005. Chairman Battista and Member Schaumber, with Member Liebman dissenting, reversed the judge and dismissed the complaint allegation that the Respondent violated Section 8(a)(1) of the Act by instructing off duty employee Ruth Perez not to speak with union representatives who were not authorized to be on company property. The judge, although acknowledging that the Respondent would not have violated the Act by telling the union organizer to leave the property, nonetheless concluded that the Respondent could not legally tell its own employees not to talk to a union organizer about union business while on the property during their nonwork time. [\[HTML\]](#) [\[PDF\]](#)

The majority disagreed with the judge's conclusion, stating "[T]here is no meaningful difference between the Respondent's telling the union organizer to leave the property and the Respondent's telling Perez to stop talking to the union organizer while on the property. In both instances, the purpose and effect of the instruction is to obtain compliance with a property restriction, one that does not impermissibly restrict Section 7 activity."

Dissenting, Member Liebman would find that the Respondent violated Section 8(a)(1). She wrote that the Respondent did not “seek to enforce the no-access rule against an asserted trespasser. Instead, the Respondent used the rule in a manner that clearly had the effect of restraining Perez’ protected activity during an organizing drive.” Contrary to her colleagues, Member Liebman believes that: “[T]he Respondent was not really enforcing a no-access rule, it did not really care about the purported trespass. What it wanted was to halt the conversation.”

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Service Employees Local 32BJ; complaint alleged violation of Section 8(a)(1). Hearing at Brooklyn on Feb. 15, 2005. Adm. Law Judge Raymond P. Green issued his decision March 31, 2005.

Ocean State Jobbers, Inc., d/b/a Ocean State Job Lot (1-CA-42065; 345 NLRB No. 109) North Kingston, RI Nov. 30, 2005. The Board agreed with the administrative law judge’s finding that by suspending and discharging employees Elio Padilla, Juan Saravia, and Edgar Anez because of their activities on behalf of Food & Commercial Workers Local 328, the Respondent violated Section 8(a)(3) and (1) of the Act. In adopting the judge’s finding, the Board did not rely on footnote 19 of his decision or his statement that “[c]hanging one’s social security number is not an easy, or a quick thing to do; changing one’s name is even harder.” It found no evidence to support this statement. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Food & Commercial Workers Local 328; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Pawtucket and Providence, May 2-4, 2005. Adm. Law Judge David L. Evans issued his decision Aug. 30, 2005.

Postal Workers (13-CB-17865; 345 NLRB No. 115) Chicago, IL Nov. 30, 2005. The Board affirmed the administrative law judge’s finding and dismissed the complaint allegation that the Respondent violated Section 8(b)(1)(A) of the Act by failing and refusing to pay under a global grievance settlement agreement moneys owed to the estate of 10 former Postal Service employees, all of whom ceased working for the Postal Service prior to the consummation of the settlement agreement and passed away prior to the distribution of settlement moneys. [\[HTML\]](#) [\[PDF\]](#)

In affirming the judge’s conclusions, the Board did not rely on his statement that a union owes no duty of fair representation to a deceased employee. Even assuming that the Union here owed such a duty, it found that the General Counsel failed to show that the Union acted arbitrarily.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Sylvia R. Williams, an Individual; complaint alleged violation of Section 8(b)(1)(A). Hearing at Chicago on June 16, 2005. Adm. Law Judge C. Richard Miserendino issued his decision Sept. 9, 2005.

Riverboat Services of Indiana, Inc. (13-CA-36708, et al.; 345 NLRB No. 116) East Chicago, IN Nov. 30, 2005. The Board affirmed the administrative law judge and held that by threatening its employees and discharging Adam Doncet, Thomas Trundy, Thomas Goodridge, and Robert Palmer, Jr. because of their protected concerted activities in contacting the Coast Guard about their working conditions, the Respondent violated Section 8(a)(1) of the Act. [\[HTML\]](#) [\[PDF\]](#)

The Respondent argued that the complaint should be dismissed because the Charging Parties, who were employed as assistant chief engineers, were supervisors under Section 2(11). The Board disagreed, citing *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, in which the Supreme Court upheld the Board's rule that the burden of providing 2(11) supervisory status rests with the party asserting it. The Board agreed with the judge that the Respondent failed to meet that burden.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charges filed by Thomas Trundy, Thomas Goodridge, Adam Doncet, and Robert Palmer, Jr., Individuals; complaint alleged violation of Section 8(a)(1). Hearing at Chicago, IL, July 26-27, 1999. Adm. Law Judge David L. Evans issued his decision Sept. 23, 1999.

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Healthcare Services Group, Inc., et al. and Food & Commercial Workers Local 1 (1199 SEIU New York's Health and Human Services Union and Individuals) Fairport, NY Nov. 25, 2005. 3-CA-25351, et al., 3-CB-8375, 8376; JD(ATL)-51-05, Judge Margaret G. Brakebusch.

Bliss Clearing Niagara, Inc. (Machinists) Hastings, MI Nov. 30, 2005. 7-CA-47816, 48571; JD-85-05, Judge Arthur J. Amchan.

Colonial Rest Home, Inc. d/b/a The Carriage House of Bay City (an Individual) Bay City, MI Nov. 30, 2005. 7-CA-48552; JD(ATL)-52-05, Judge George Carson II.

Plumbers and its Local 189 (an Individual) Columbus, OH Nov. 30, 2005. 9-CB-11311, 11312; JD(ATL)-49-05, Judge John H. West.

Starwood Hotels & Resorts Worldwide, Inc. d/b/a Sheraton Universal Hotel (UNITE HERE Local 11) Universal City, CA Dec. 2, 2005.

NO ANSWER TO COMPLAINT

(In the following case, the Board granted the General Counsel's motion for summary judgment based on the Respondent's failure to file an answer to the complaint.)

Topor Contracting, Inc. (Operating Engineers Local 17) (3-CA-24557; 345 NLRB No. 110) Buffalo, NY Nov. 30, 2005. [\[HTML\]](#) [\[PDF\]](#)

TEST OF CERTIFICATION

(In the following cases, the Board granted the General Counsel's motion for summary judgment on the ground that the Respondent has not raised any representation issue that is litigable in the unfair labor practice proceeding.)

Grange Debris Box and Wrecking Co., Inc. (Teamsters Local 624) (20-CA-32679; 345 NLRB No. 108) San Rafael, CA Nov. 30, 2005. [\[HTML\]](#) [\[PDF\]](#)

U-Haul Co. of Nevada, Inc. (Machinists Local 845) (28-CA-19441, 20001; 345 NLRB No. 118) Henderson, NV Nov. 30, 2005. [\[HTML\]](#) [\[PDF\]](#)

LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board considered exceptions to and adopted Reports of Regional Directors or Hearing Officers)

DECISION AND CERTIFICATION OF REPRESENTATIVE

America Red Cross Blood Services Northern Ohio Region, Cleveland, OH, 8-RC-16640, Nov. 29, 2005 (Chairman Battista and Members Liebman and Schaumber)
Lechner & Sons, Inc., White Prospect, IL, 13-RC-21360, Nov. 30, 2005 (Chairman Battista and Members Liebman and Schaumber)

(In the following cases, the Board adopted Reports of Regional Directors or Hearing Officers in the absence of exceptions)

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Heritage Enterprises, Inc., d/b/a Heritage Manor of Gillespie, Gillespie, IL, 14-RC-12555, Dec. 2, 2005 (Chairman Battista and Members Liebman and Schaumber)

Messenger Sign Co., Seattle, WA, 19-RC-14749, Dec. 2, 2005 (Chairman Battista and Members Liebman and Schaumber)
Osram Sylvania, Inc., Versailles, KY, 9-RD-2083, Dec. 2, 2005 (Chairman Battista and Members Liebman and Schaumber)

DECISION AND CERTIFICATION OF REPRESENTATIVE

College Point Asphalt, LLC, Flushing, NY, 29-RC-10358, Dec. 2, 2005 (Chairman Battista and Members Liebman and Schaumber)
THI of Missouri at Gravois, L.L.C. d/b/a Sunset Hills Health and Rehabilitation Center, St. Louis, MO, 14-RD-1846, Dec. 2, 2005 (Chairman Battista and Members Liebman and Schaumber)

**DECISION AND DIRECTION [that Regional Director
open and count ballots]**

Ferrovial Agroman, S.E., Utuado, PR, 24-RC-8481, Dec. 2, 2005 (Chairman Battista and Members Liebman and Schaumber)

**DECISION AND ORDER [remanding to Regional Director for
further appropriate action]**

J.F. Sobieski Mechanical Contractors, Inc., Wilmington, DE, 4-RC-20964 Dec. 2, 2005
 (Chairman Battista and Members Liebman and Schaumber)

*(In the following cases, the Board granted requests for review
of Decisions and Directions of Elections (D&DE) and
Decisions and Orders (D&O) of Regional Directors)*

Rinker South Central Region, East Tennessee Concrete Div., Knoxville, TN,
 10-RC-15563, Nov. 30, 2005 (Chairman Battista and Members Liebman and
 Schaumber)

*(In the following cases, the Board denied requests for review
of Decisions and Directions of Elections (D&DE) and
Decisions and Orders (D&O) of Regional Directors)*

Boston Culinary Group Inc., Macungie, PA, 4-RC-21072, Nov. 30, 2005
 (Chairman Battista and Members Liebman and Schaumber)

Miscellaneous Board Orders

**ORDER [remanding to Regional Director for further
appropriate action]**

Empire Aero Center, Inc., Rome, NY, 3-RC-11579, Nov. 30, 2005 (Chairman Battista and
Members Liebman and Schaumber)

ORDER [denying Union's request for reconsideration]

Western Aggregates, LLC, Marysville, CA, 20-RD-2417, Nov. 30, 2005 (Chairman Battista and
Members Liebman and Schaumber)

**ORDER [granting Employer's request to withdraw
request for review]**

Rinker South Central Region, East Tennessee Concrete Div., Knoxville, TN,
10-RC-15563, Dec. 1, 2005 (Chairman Battista and Members Liebman and
Schaumber)
